

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DORA SOLARES,

Plaintiff,

v.

RALPH DIAZ, et al.,

Defendants.

Case No. 1:20-cv-00323-NONE-BAM

**ORDER GRANTING PLAINTIFF'S
UNOPPOSED *EX PARTE* APPLICATION
FOR A RULING ON DEFENDANTS'
MOTION TO DISMISS**

(Doc. 34)

Plaintiff Dora Solares initiated this civil rights action against defendants Ralph Diaz, Kenneth Clark and Joseph Burns (collectively "Defendants") on March 2, 2020. (Doc. 1.) Plaintiff filed a first amended complaint on June 8, 2020.

On June 22, 2020, Defendants moved to dismiss Plaintiff's first amended complaint. (Doc. 16.) The motion is fully briefed.

On April 12, 2021, the district court referred the motion to dismiss to the undersigned for findings and recommendations. (Doc. 28.) Thereafter, on April 16, 2021, the court stayed discovery in this action pending an order resolving the motion to dismiss. The court indicated that it would address the pending motion to dismiss as soon as practicable to minimize any delay. (Doc. 32.)

On July 28, 2021, Plaintiff filed the instant *ex parte* application requesting a ruling on the motion to dismiss. (Doc. 34.) Plaintiff notes that more than a year has passed since Defendants

1 filed their motion to dismiss and more than three months have passed since the motion was
2 referred to the undersigned. Plaintiff's counsel declares that the delay in a ruling on the motion to
3 dismiss results in the continued stay of discovery and, in turn, "severely prejudices Plaintiff."
4 (Doc. 34, Declaration of Counsel at ¶¶ 5, 6.) Plaintiff's counsel reports, on information and
5 belief, that some potential witnesses have been released from CDCR custody and/or employment,
6 which hampers Plaintiff's ability to locate these witnesses and forces Plaintiff to incur significant
7 costs conducting private independent investigation of this case that would otherwise be addressed
8 by discovery. (*Id.* at ¶ 6.) Plaintiff indicates that Defendants do not oppose the *ex parte* request.

9 As a general matter, the court attempts to address motions in the order in which they are
10 filed and strives to avoid delays whenever possible. However, as the parties are aware, the judges
11 of the Eastern District of California have long labored under one of the heaviest caseloads in the
12 nation, and delays are inevitable despite the court's best efforts. The court is cognizant of the
13 delay in resolving the pending motion to dismiss and will issue findings and recommendations in
14 due course. Accordingly, Plaintiff's *ex parte* application for a ruling on Defendants' motion to
15 dismiss (Doc. 34) is HEREBY GRANTED.

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17 IT IS SO ORDERED.

18 Dated: July 29, 2021

19 /s/ Barbara A. McAuliffe
20 UNITED STATES MAGISTRATE JUDGE

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